IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.APPLICATION NO.1183 OF 2007
IN
CRI.APPEAL NO.1089 OF 2007

Nitin Malhari Bhadave ..Applicant

Vs.

The State of Maharashtra ..Respondent

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Mr.Sandesh D.Patil Advocate for Applicant
Mr.A.S.Gadkari APP form the State

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CORAM: S.B.MHASE AND
SMT.V.K.TAHILRAMANI,JJ.

DATE : DECEMBER 11, 2007

P.C.

1. Heard both sides.

2. This is the bail application of the original accused no.1 from the Sessions Case No. 872 of 2002 decided by the Additional Sessions Judge, Greater Bombay. In this case, originally there were three accused. The accused no.2 was the wife of the deceased. She has been acquitted and the accused nos.1 and 3 were convicted under Section 302 read with Section 120-B read with Section 34 of IPC and

sentenced for life and to pay a fine of Rs.1000/- each.

3. As per the prosecution case, on the date of the incident on 6.5.2002 at about 8.45 p.m. the deceased was walking in a drunk position along with accused no.1 and the accused no.1 was holding him. At that time, 2 to 3 persons were standing nearby, one of them was accused no.3. At that point of time, the accused no.3 gave a fist blow to the deceased thereby the deceased fell on the ground. Thereafter, accused no.1, accused no.3 and another person left the spot. The deceased did not get up and he succumbed to death. Prima facie, considering the prosecution case, it appears that the fatal blow was given by the accused no.3. So far as accused no.1 is concerned, prima facie, the involvement of the accused no.1 appears to be doubtful. According to the prosecution, the accused no.1 brought the deceased at the spot so as to facilitate the assault by the rest of the accused, however, as per the defence, the accused no.1 was supporting the deceased in a drunk position and he was not a person involved either in a conspiracy under Section 120-B

and/or shared the common intention under Section 34 of IPC.

4. Taking the prosecution case as it is, prima facie, it appears that the involvement of the accused no.1 is rather doubtful though the presence of the accused no.1 is established. Since, we are considering the case for bail, we find that there is a grey area so far as the role of the accused no.1 is concerned and therefore, we are inclined to grant bail. We are inclined to grant bail during the pendency of the appeal also, because during the trial also, the accused no.1 was on bail and he has regularly attended the trial and has not tried to influence the witnesses. The conduct of the accused no.1 during the trial also pursuades us to continue and grant him bail during the pendency of the appeal.

5. Therefore, the Criminal Application is allowed. The accused no.1-Nitin Malhari Bhadave be released on bail of Rs.10,000/- (Rs. ten thousand only) with like surety during the pendency of the appeal.

6. Application is disposed of accordingly.

[SMT.V.K.TAHILRAMANI, J.] [S.B.MHASE, J.]